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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 3:22-cr-00421-IM-1

Plaintiff,

v.

**DEFENDANT’S SENTENCING
MEMORANDUM**

KEVIN ROBERT MCCARTY,

Defendant.

Kevin Robert McCarty will appear before this Court on October 13, 2023, for sentencing upon his plea of guilty to one count of Online Enticement of a Minor in violation of Title 18, U.S.C. § 2422(b) and two counts of Sexual Exploitation of a Child in violation of Title 18, U.S.C. § § 2251(a) and (e). Mr. McCarty respectfully asks the Court to impose the jointly recommended sentence of the parties and the Probation Office, that is 240 months imprisonment on each count run concurrently.

Sentencing Standard

After correctly calculating the applicable Guidelines range, the court must consider all of the §3553(a) factors and make an “individualized assessment.” *Gall v. United States*, 552 U.S. 38,

50 (2007). This includes consideration of the history and characteristics of the defendant and the nature and circumstances of the offense. 18 U.S.C. § 3553(a)(2). “The overarching statutory charge for a district court is to ‘impose a sentence sufficient, but not greater than necessary’ to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to protect the public; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment.” *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008), *citing* 18 U.S.C. § 3553(a)(2).

Sentencing Guidelines

Mr. McCarty agrees with the guideline calculation in the Presentence Report, which is consistent with the plea agreement. PSR, ¶¶ 67-96; ECF 38, ¶ 8. Mr. McCarty is a total offense level 38. He is a criminal history category I based on 1 point. PSR, ¶ 101. This results in a guideline range of 235-293.

Argument For The Jointly Recommended Sentence

This case arose out of Mr. McCarty’s online conduct towards the three victims. The nature and circumstances of the offense and personal history and characteristics are sufficiently recounted in the PSR. ¶¶ 13-60; *Id.* ¶ 106-110. Mr. McCarty is 37 years old and has a minor criminal history. He deeply regrets his conduct in this case and fully accepts responsibility. He is committed to taking advantage of any opportunities for treatment he can receive from the Bureau of Prisons.

The twenty-year sentence recommended by the parties is a true guideline sentence. Mr. McCarty is not receiving any § 3553 levels. The sentence accounts for the three victims through a multiple count adjustment. This sentence is sufficient but not greater than necessary to comply with the goals of sentencing.

Mr. McCarty does not object to the terms of supervision proposed by Probation but requests a term of supervised release of five years. If Mr. McCarty does not fully comply with the terms of supervision, the length of supervision can easily be extended under federal law.

Respectfully submitted on October 10, 2023.

/s/ Robert Hamilton

Robert Hamilton
Attorney for Defendant